

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
)
)

Distribution of the)
2015 Satellite Royalty Funds)
_____)

Docket No. 17-CRB-0011-SD (2015)

REPLY COMMENTS OF THE ALLOCATION PHASE PARTIES

The Allocation Phase Parties¹ submit the following response to the Copyright Royalty Judges' ("Judges") notice published at 82 Fed. Reg. 45624 (Sept. 29, 2017) ("Notice") requesting reply comments on the Allocation Phase Parties' motion for partial distribution of the 2015 satellite royalty funds ("Motion").

In their Notice, the Judges request "reply comments that respond to any issues" raised by the two parties who commented on the motion – Mr. David Powell and Multigroup Claimants ("MGC") – and "address whether or not any commenter raised a reasonable objection to the proposed partial distribution and if not, why not." Notice, 82 Fed. Reg. at 45625. For the reasons set forth below, the Allocation Phase Parties respectfully submit that neither commenter has raised any reasonable objection, and the Motion should be granted.²

I. MR. POWELL PRESENTS NO REASONABLE OBJECTION TO THE MOTION

Mr. Powell's objection to the Motion mirrors his objection to a similar motion for partial distribution of the 2015 cable royalty funds (which the Judges granted over Mr. Powell's objection). *Compare* Verified Motion Partial Distribution 2015 Satellite Objection Unreasonable

¹ The Allocation Phase Parties are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (consisting of Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, and SESAC, Inc.) and Devotional Claimants.

² Two of the Allocation Phase Parties, Program Suppliers and Devotional Claimants, also have submitted separate reply comments.

Decision, No. 17-CRB-0011 SD (2015) (filed May 12, 2017) *with* Verified Motion Partial Distribution 2015 Cable Objection Unreasonable Decision, No. 16-CRB-0020 CD (2015) (filed May 12, 2017). The Judges observed that Mr. Powell’s objection to the 2015 cable motion is “virtually incomprehensible” and found that it “fails to rise to the level of being a reasonable objection to the partial distribution.” *Order Granting Motion for Partial Distribution*, No. 16-CRB-0020 CD (2015), at 2 (June 6, 2017).³ Mr. Powell’s objection to the Motion here is equally incomprehensible and likewise fails to present any reasonable objection to the requested partial distribution.

II. MGC PRESENTS NO REASONABLE OBJECTION TO THE MOTION

MGC’s comments raised “no objection to the proposed distribution of 2015 satellite royalty funds to ‘Allocation Phase Claimants’ *other than* to such groups as are referred to as the ‘Program Suppliers’ and the ‘Devotional Claimants’.” Multigroup Claimants’ Objection to Partial Distribution of 2015 Satellite Funds to Certain Allocation Phase Claimants (filed May 17, 2017) (“MGC Objection”), at 1 (emphasis in original). MGC objects with respect to Program Suppliers and Devotional Claimants on the ground that it supposedly has no “means to permit proper identification of those claimant representatives and that neither of the claimant representatives was an established claimant with respect to satellite funds” Notice, 82 Fed. Reg. at 45625. MGC’s objection ignores the long history of satellite distributions to all Allocation Phase Parties, including Program Suppliers and Devotional Claimants, and is without merit.

MGC’s suggestion that it does not know the identity of the Program Suppliers and Devotional Claimants (MGC Objection at 3) is baseless. MGC claims to be the successor to –

³ The Judges further observed that the 40% of the cable funds that the Copyright Office would continue to hold after a 60% distribution should suffice to resolve any remaining disputes with Mr. Powell. *Id.* The Motion here similarly seeks to distribute only 60% of the 2015 satellite funds.

and is represented by the same long-time counsel as – Independent Producers Group (“IPG”), which is very familiar with both Program Suppliers and Devotional Claimants from prior satellite distribution phase (Phase II) litigation against them. *See* Reply Comments of Program Suppliers (filed Oct. 30, 2017) (“Program Suppliers Reply Comments”), at 1, n.4; Devotional Claimants’ Reply to Multigroup Claimants’ Objection to Partial Distribution of 2015 Satellite Royalty Funds to Certain Allocation Phase Claimants (“Devotional Reply Comments”), at 3-6.

Nor is there any merit to MGC’s argument that Program Suppliers and Devotional Claimants are not “established claimants” entitled to share in satellite distributions. MGC Objection at 3-7. Like all of the Allocation Phase Parties, Program Suppliers and Devotionals consistently have received partial and final distributions from the satellite royalty funds over the years. *See* Program Suppliers Reply Comments at 2-4; Devotional Reply Comments at 6-7. While the Allocation Phase Parties historically have settled their disputes over the allocation of satellite royalties, the Judges have never suggested that a litigated allocation is necessary for a party to be an established claimant, only that the allocation be final – by compromise or otherwise.⁴

Nor would such a litigation prerequisite for partial distributions make sense. As the Judges know, the parties to these proceedings are represented by experienced counsel who advocate vigorously for their clients and test each other’s claims; the parties consistently have agreed that Program Suppliers and Devotional Claimants are entitled to receive satellite distributions. Indeed, MGC has not even alleged (let alone attempted to show) that Program Suppliers and Devotional Claimants lack members who are entitled to satellite royalties, nor

⁴ *See, e.g.*, Order Granting In Part and Denying In Part IPG’s Motion for Partial Distribution of Program Suppliers’ Royalties, Docket Nos. 2012-6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II) at 10 & n.11 (Sept. 29, 2016) (“Sept. 29, 2016 Order”).

could they.⁵ Also, such an approach would upend the Judges’ longstanding policy of promoting settlement,⁶ effectively mandating a litigated resolution to establish a right to future partial distributions, even where compromise may be had.

Finally, MGC fails to articulate any prejudice. MGC offers no argument that the 40 percent of funds remaining if the Motion is granted would be insufficient to resolve any viable claims by MGC. Moreover, the relief requested in the Motion is conditional upon execution of repayment agreements pursuant to Section 801(b)(3)(C)(ii), and MGC does not contend there is any “inability or unwillingness of a party to disgorge an overpayment.” Sept. 29, 2016 Order at 9.

In sum, MGC has presented no reasonable objection to the requested distributions as to Program Suppliers or Devotional Claimants – and affirmatively states that it has “no objection” whatsoever as to the remaining Allocation Parties.⁷

CONCLUSION

For the foregoing reasons, the Motion should be granted, and a partial distribution of 60% of the 2015 satellite funds should be made to all Allocation Phase Parties as soon as feasible. Partial distributions are important to the budgeting and business operations of the Allocation Phase Parties and their members, and they respectfully request that the distribution be made prior to the end of the calendar year.

⁵ Moreover, MGC does not claim (nor could it) that the 40% of the 2015 satellite funds that will remain with the Copyright Office if the Motion is granted would be insufficient to resolve any disputes it has with Program Suppliers and Devotional Claimants. *See Order Granting Motion for Partial Distribution*, No. 16-CRB-0020 CD (2015), at 2 (June 6, 2017) (“Moreover, the 40% of funds held in the 2015 cable fund should be sufficient to resolve any dispute that Mr. Powell may have with either the music or joint sports claimant groups.”).

⁶ *See, e.g., Order Granting Phase I Claimants’ Motion for Partial Distribution of 2008 Satellite Royalty Funds*, Docket No. 2010-7 CRB SD 2008 (Jan. 11, 2011).

⁷ MGC further “avers” that it would be appropriate to distribute “sixty percent (60%) of sixty percent (60%)” to the remaining Allocation Phase Parties. MGC Objection at 8. For the reasons stated above, the Allocation Phase Parties maintain that the full requested distribution should be made.

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Dated: October 30, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2017, a copy of the foregoing Reply Comments of the Allocation Phase Parties was served electronically through eCRB and by U.S. Postal Service Express Mail to the following:

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Certificate of Service

I hereby certify that on Monday, October 30, 2017 I provided a true and correct copy of the Notice - Other to the following:

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